

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

SYSCO GRAND RAPIDS LLC,

Respondent/Employer,

and

**GENERAL TEAMSTERS UNION LOCAL
NO. 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,**

**Case: 07-CA-146820
07-CA-148609
07-CA-149511
07-CA-152332
07-CA-155882
07-CA-166479
07-RC-147973**

Charging Party/Petitioner.

**SYSCO GRAND RAPIDS LLC’S REPLY TO COUNSEL FOR THE
GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S SECOND RENEWED
MOTION TO REOPEN THE RECORD FOR LIMITED PURPOSE OF PRESENTING
ADDITIONAL EVIDENCE OF CHANGED CIRCUMSTANCES**

On June 15, 2018, Sysco Grand Rapids LLC (“Sysco”) filed a Second Renewed Motion to Reopen the Record for Limited Purpose of Presenting Additional Evidence of Changed Circumstances (“Motion”). On June 25, 2018, Counsel for the General Counsel (“General Counsel”) filed its reply in opposition to the Motion (“Opposition”). The Opposition filed to this Motion continues the pattern established in responses to the two previous motions. Each of the motions establish that significant turnover has changed the composition of the unit, that there has been large replacement of the relevant supervisors of the members of the unit, and that a great deal of time has passed. Based upon those uncontested and normal changes and those which were ignored by the ALJ at the trial, Sysco has asked that the Board reopen the record to permit consideration of the present circumstances in determining the appropriateness of the *Gissel* order

at the time of its entry rather than those existing at the time of the unfair labor practices.¹ In each, Sysco has cited the substantial number of consistent rulings in the Courts of Appeal with jurisdiction to consider enforcement of any such order in this case requiring the Board to consider the circumstances at the time a *Gissel* order is entered.

The General Counsel does not deny the increasing changes and time, nor the consistent and numerous Courts of Appeals decisions requiring their consideration. Rather, he urges in barely disguised rhetoric, that the Board should continue its wasteful and wholly futile policy of defying the Courts of Appeals. Applying that policy, the General Counsel argues that the new evidence is “irrelevant.” *See* Opposition, pp. 2-3.

Next, the General Counsel objects to the procedure requested – that of a hearing to present evidence of the present circumstances, on the grounds of the public policy favoring “the finality of judgements.” *See* Opposition at p. 3. The General Counsel fails to acknowledge that the judgment in this case occurs when the court of appeals enforces or denies enforcement of a Board Order. No earlier action amounts to a “judgment”. Moreover, the General Counsel suggests no alternate way of considering what the Courts require be considered. He thus continues to insist on defiance of mandatory precedent.

Finally, the General Counsel again cites a number of cases considering the present circumstances but finding the changes in circumstances inadequate. *See* Opposition, pp. 3-4. However, without considering proof of the present circumstances in this case, the Board cannot consider that issue here. That consideration is what the Courts of Appeals require. They simply refuse enforcement of a Board Order without it.

¹ On June 28, 2018 the Charging Party filed an opposition to the Respondent’s motion. In it, they adopt the Board’s argument but also argue that the ALJ below questioned the credibility of the witness. However, the ALJ below never questioned – or considered – the accuracy of the business records the witness relied upon. The ALJ assigned to evaluate the documentary evidence proffered by the Respondent upon reopening the record will have every opportunity to make his or her own credibility determinations upon reviewing the evidence and the Respondent asserts that those determinations should occur as a result of this motion.

CONCLUSION

What the General Counsel does not say is more critical than what he does say. The General Counsel does not deny Sysco's principal argument - Courts of Appeals will not enforce the requested *Gissel* order in this case unless the Board considers its propriety under the circumstances existing at the time of its entry. These motions are intended to provide the Board with evidence of what those circumstances are. Without this evidence, the Board simply cannot enter an order with any chance of enforcement. Failure to grant the motions, as urged by the General Counsel, means that the years of litigation, and the expense incurred by the parties, will be wasted. No public policy is furthered by such a result.

Respectfully submitted,

SYSCO GRAND RAPIDS LLC
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CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of July, 2018, I filed a copy of the **Sysco Grand Rapids LLC's Reply to Counsel for the General Counsel's Opposition to Respondent's Second Renewed Motion to Reopen the Record for Limited Purpose of Presenting Additional Evidence of Changes Circumstances** with the Executive Secretary of the NLRB using the Board's E-Filing System. I further certify that at the same time, I served a copy of the same on the Counsel for the General Counsel and the Charging Party's counsel of record as follows:

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